

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/11/2007

C O R A M

THE HONOURABLE Mr.JUSTICE C. NAGAPPAN

Appeal Suit No. 816 of 1995

1. M/s. Skins Tane Co.,
rep by its Partners
No.1-B, Mattukara Veerabadran St.,
Periamet, Madras 600 003.

2. A.M.Abdul Khader
2nd Appellant is one of the Partner
of 1st Appellant Firm
No.1-B, Mattukara Veerabadran St.,
Periamet, Madras 600 003.

... Appellants/Defendants 1 & 3

Vs

Central Bank of India
Madras Main Branch
rep by its principal Officer
and Chief Manager
No.11, Second Line Beach
Madras 600 001.

... Respondent/Plaintiff

Appeal against the judgment and decree dated 25.4.1994 made in O.S.No.11102 of 1988 on the file of 18th Asst. Judge, City Civil Court, Madras.

For Appellants

... Mr. Ishtiaq Ahmed

For Respondent

... Ms. S.K.Indhu,
for M/s. Rangarajan &
Prabhakaran

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J U D G E M E N T

The unsuccessful defendants 1 and 3 have preferred this appeal against the judgment and decree dated 25.4.1994 made in O.S.No.11102 of 1988 on the file of 18th Assistant Judge, City Civil Court, Madras.

2. The respondent herein filed the suit seeking for a judgment and decree directing the defendants to pay the plaintiff a sum of Rs.70,459.92/- with interest at the rate of 16.5% per annum from the date of plaint till the date of realisation and for costs of the suit.

The case of the plaintiff is that the first defendant is a partnership Firm and defendants 2 to 7 are its partners and the first defendant opened a current account with the plaintiff on 12.9.1987 in respect of its leather business and it was regularly issuing cheques to various parties and the plaintiff has been honouring those cheques and the first defendant issued three consecutive cheques all dated 20.11.1987 for Rs.29,789/-; Rs.334/- and Rs.75,000/- respectively and all the three cheques were drawn in favour of the Sales Tax Officer, Vepery Assessment Circle, Madras, and the plaintiff as a prudent banker and keeping in mind that the first defendant is a commercial organisation and the cheques were drawn on a government agency, had in good faith passed all the three cheques for payment on 9.12.1987 even though there was a credit balance of only Rs.1,312.03 in the current account of the first defendant with the plaintiff. It is also stated by the plaintiff that the representative of the first defendant, who was present in the bank premises on 9.12.1987, consented to the honouring of three cheques and promised to bring sufficient funds immediately and adjust the overdrawn position. According to the plaintiff, the first defendant, on 6.1.1988, adjusted the current account to cover the monies due to the plaintiff in respect of the cheques for Rs.334/- and Rs.29,789/- and it did not repay the plaintiff the sum of Rs.75,000/- being the amount due in respect of the third cheque. It is further stated by the plaintiff that the first defendant by letter dated 24.12.1987 informed the plaintiff that it had filed a writ petition in WP No.13062 of 1987 in this Court and obtained injunction order and requested the plaintiff to stop the payment of the third cheque for Rs.75,000/- and the plaintiff sent a reply dated 29.12.1987 informing the first defendant that all the three cheques were paid for by the plaintiff on 9.12.1987 itself. According to the plaintiff, the defendants refused to pay the outstanding amount and issued legal notices dated 8.1.1988 and 7.7.1988 and the plaintiff sent reply notice dated 28.7.1988 requesting the first defendant to settle the dues and that was not done and hence the suit.

3. The defendants in the written statement admitted that they are having a current account with the plaintiff and they issued all the three cheques for the sums stated therein. According to them, they issued letter dated 24.12.1987 giving instructions to the plaintiff to stop payment with regard to the cheque to the value of Rs.75,000/- since they filed writ petition and obtained an order of stay with regard to the payment of the amount and only after that, the plaintiff informed them that the cheque for Rs.75,000/- along with two other cheques had been passed for payment on 9.12.1987. The defendants have denied the plaintiff's averment that the first defendant's representative was present at the bank

on 9.12.1987 and promised to bring sufficient funds. It is further stated by the defendants that they did not have any over-draft facility arrangement with the plaintiff bank and on the negligence of passing of the cheque, the defendants had suffered damages and they are not liable to pay the amount due under the cheque. It is further stated by the defendants that the plaintiff has no right to debit the proceeds of the cheque issued by the customs department to the first defendant and credit the same to the balance outstanding in the current account and the plaintiff is bound to return that amount to the first defendant with interest at 24%. The defendants made a counter claim for that amount.

4. The plaintiff filed Reply statement stating that the act of the defendants in issuing a cheque when sufficient funds are not available in current account would tantamount to a request for temporary over-draft facility and in normal commercial and banking practice, such requests are often acceded to by financial institutions in order to protect, assist and help customers and the fact that the cheques were issued in favour of the Sales Tax Officer had weighed considerably with the plaintiff for honouring the cheques. It is further stated in the reply statement that the defendants by their words and conduct had prevailed upon the plaintiff to honour the cheques and the plaintiff acted upon it as a prudent banker. According to the plaintiff, the first defendant having issued cheque dated 20.11.1987 ought to have issued instruction for "stop payment" immediately and cannot hold the plaintiff liable for the consequences of honouring the cheque more than a month subsequent to the issuance of cheque. According to the plaintiff, the cheque to the value of Rs.14,110/- was issued by the Customs Authority towards cash component support payable to the exporter, namely, the first defendant, and according to the procedure, the cash component support is payable only to the customer's bank and the first defendant had authorised the plaintiff to credit the same by their letter dated 9.5.1988 and there is also a general lien for the banker as per Section 171 of the Indian Contract Act and hence, the counter claim is not maintainable.

5. The trial court framed six issues and the plaintiff examined P.W.1 and marked Exs.A.1 to A.13 on its side and the defendants examined D.W.1 marked Ex.B.1 on their side. The trial court, on a consideration of oral and documentary evidence, held that the defendants are liable to pay the suit claim and they are not entitled for the counter claim and accordingly decreed the suit and dismissed the counter claim. Aggrieved by the judgment and decree, the present appeal is preferred. For the sake of convenience, in this judgment, the parties are referred to as arrayed in suit.

6. The points for determination in the appeal are:

(1) Whether the defendants are liable to pay the plaintiff the amount claimed in the suit.

(2) Whether the plaintiff is entitled for subsequent interest at the rate of 16.5% per annum.

(3) Whether the defendants are entitled to the counter claim.

POINT No.1:

7. It is not in dispute that the first defendant firm was having a current account with the plaintiff Bank and it issued three consecutive cheques all dated 20.11.1987 for Rs.29,789/-; Rs.334/- and Rs.75,000/- and all the three cheques were drawn in favour of the Sales Tax Officer, Vepery Assessment Circle, Madras. According to the plaintiff there was a credit balance of Rs.1,312.03/- only in the current account of the first defendant on 9.12.1987 and the plaintiff, as a prudent banker and keeping in mind that the first defendant is a leather exporter and the cheques were drawn up on a government agency, in good faith, had passed all the three cheques for payment on 9.12.1987 and the first defendant adjusted the current account to cover the monies in respect of the cheques for Rs.334/- and Rs.29,789/- and it did not repay the plaintiff the sum of Rs.75,000/- being the amount due in respect of the third cheque. The case of the defendants is that the first defendant had no over-draft arrangement with the plaintiff bank and the cheque in question was issued towards a tax liability and in the meanwhile, the first defendant filed a writ petition and obtained an order of injunction pertaining to that tax liability and hence, it requested the plaintiff to 'stop payment' of the cheque in question and the plaintiff had passed the cheque without proper verification of the balance in the account and in disregard to the instruction of stoppage of payment and hence, they are not liable to pay the amount due under the cheque.

8. The plaintiff examined its Assistant Branch Manager as P.W.1 and according to him, there was a balance outstanding of Rs.1,312.03 only, on 9.12.1987 in the current account of the first defendant as per Ex.A.1 - Statement of Account and all the three cheques had been passed and paid by the plaintiff on that day itself. Ex.A.2 is the letter, dated 24.12.1987, of the first defendant requesting the plaintiff to 'stop payment' of the cheque for sum of Rs.75,000/-. Ex.A.3 is the letter dated 28.12.1987 sent by the plaintiff to the first defendant stating that the current account was over-drawn to the extent of Rs.1,03,840.97/-. Ex.A.4 is the reply dated 29.12.1987 sent by the plaintiff to the first defendant stating that all the three cheques were paid on 9.12.1987 itself and the payment was made with the knowledge of the representative of the first defendant. Ex.A.5 is the Letter dated 5.1.1988 of the first defendant stating that they have already instructed the plaintiff to 'stop payment' of the cheque for a sum of Rs.75,000/- and hence, they are not liable to pay the said amount to the plaintiff Bank. Ex.A.6 is the Reply dated 8.1.1988 sent by the the first defendant's counsel to the plaintiff denying the liability to pay. Ex.A.7 is the Letter dated

25.5.1988 of the plaintiff to the first defendant informing the debit balance in their account and requesting them to bring the account to order. Ex.A.8 is the Reply dated 7.7.1988 sent by the first defendant through their Advocate. Ex.A.9 is the suit notice dated 28.7.1988 issued by the counsel for the plaintiff demanding payment of the amount. Ex.A.10 is the Reply dated 10.10.1988 sent by the counsel for the first defendant. The first defendant has examined one of its partners as D.W.1 and he has stated that the first defendant filed a writ petition against the Commercial Tax Authorities from levying or collecting tax and obtained an order of injunction restraining them from collecting the same and hence, they sent Ex.A.2 Notice to the plaintiff to stop payment of the cheque for a sum of Rs.75,000/-. Ex.B.1 is the certified copy of the Order of Injunction dated 23.12.1987 passed in the writ petition.

9. Mr. Ishtiaq Ahmed, learned counsel for the appellants, contends that the first defendant was not provided with over-draft facility and the plaintiff has not shown that the payment was made with the knowledge of the first defendant.

10. Ms. S.K.Indhu, learned counsel for the respondent, submits that the first defendant Firm has drawn the cheque for the sum of Rs.75,000/- in excess of the amount standing to the credit of its current account and it has to be taken as request for a loan and since the cheque is honoured, the first defendant has borrowed the money. In support of her submission she relied on the decision of a Division Bench of the Bombay High Court in BANK OF MAHARASHTRA v.. UNITED CONSTRUCTION COMPANY AND OTHERS [Vol.60 Company Cases 163 (1986)]. In the above decision, the Division Bench considered the question as to whether there should be an express agreement for grant of over-draft facility between the banker and a customer and held as follows:

" As to the question whether there was any agreement to grant over-draft facility, it might be useful to note that in Halsbury's Laws of England (fourth edition) volume 3, at page 155, it has been stated as follows:

"A customer may borrow from a banker by way of loan or by way of overdraft. A loan is a matter of special agreement. In the absence of agreement, express or implied from a course of business, a banker is not bound to allow his customer to overdraw. An agreement for an overdraft must be supported by good consideration, and it may be express or implied.

Drawing a cheque or accepting a bill payable at the bankers where there are not funds sufficient to meet it, amounts to a request for an over-draft."

In *Cuthbert v. Robarts, Lubbock and Co.* [1909] 2 Ch 226, Cozens-Hardy M.R. (at page 233 of the report) has observed as follows:

"If a customer draws a cheque for a sum in excess of the amount standing to the credit of his current account, it is really a request for a loan, and if the cheque is honoured the customer has borrowed money."

Further observations go on to show that it was held that such borrowing would be a simple transaction of borrowing and would not amount to borrowing upon security. But we are not concerned with that question here. Paget in his classic treatise on the Law of Banking (1972 edition) at page 132 has observed as follows:

"A banker is not obliged to let his customer overdraw unless he has agreed to do so or such agreement can be inferred from course of business; borrowing and lending are a matter of contract not necessarily premeditated but, possibly, spontaneous, as where a customer, without previous arrangement, draws a cheque, payment of which overdraws his account."

Unfortunately, the aforesaid decision and the aforesaid books were not shown to the learned trial judge. If the legal position set out in the same is taken into account there is no doubt that where a customer, namely, an account-holder in bank, even without any express grant of an overdraft facility overdraws on his account and the cheque issued by him is honoured, the transaction amounts to a loan and the customer is bound to make good the loan to the bank with reasonable interest. As far as Mr. Sayed, learned counsel for the respondents, is concerned, he did not point out any decision or text-book where a view contrary to the above has been propounded. He merely stated that he supported the decision of the trial court and had nothing more to say.

We are, therefore, of the view that the learned trial judge was, with respect, in error in dismissing the suit of the plaintiff on the ground that there was no express oral agreement regarding the grant of overdraft as alleged by the plaintiff. Even in the absence of such an express agreement, in our view, in the circumstances of the case, there was an implied agreement for grant of overdraft or loan facility and the customer, namely, defendant No.1 was liable to make good to the bank the amount over-drawn in its aforesaid current account with reasonable interest."

11. As already seen, in the present case, the plaintiff is the banker for the first defendant Firm, which is engaged in leather export business, and though the first defendant was not granted over-draft facility, it has drawn the cheque in question in favour of the government Authority in excess of the amount standing to the credit of its current account and the plaintiff as a banker had honoured the cheque and in the circumstances of the case, an agreement for over-draft can be implied from course of business and the customer, namely, the first defendant, is liable to make good to the plaintiff Bank the amount over-drawn in its current account with reasonable interest. I am also in agreement with the view taken by the Division Bench of the Bombay High Court in the decision referred to supra. As rightly held by the trial Court, the defendants are liable to pay the plaintiff the amount claimed in the suit and the point is answered thus.

Point No.2:

12. Mr. Ishtiaq Ahmed, learned counsel for the appellants, contends that there was neither any express agreement as to the grant of any over-draft facility nor any agreement that interest would be paid at a particular rate in respect of the amounts over-drawn between the plaintiff and the first defendant and the claim of interest at the rate of 16.5% per annum made by the plaintiff is unreasonable and the trial Court ought not to have accepted that plea and granted interest as such. Having regard to the fact that there was no express agreement for grant of over-draft facility to the first defendant and the other circumstances of the case, the only reasonable rate of interest which can be granted is at 12% per annum from the date of plaint till the date of realisation. The point is determined accordingly.

Point No.3:

13. It is not in dispute that a cheque for Rs.14,110/- issued by the Customs Authority towards cash component support payable to the first defendant as exporter was credited in the current account of the first defendant on 26.4.1988. According to the defendants, the plaintiff should have paid this amount to the first defendant and they have no right to debit the proceeds of the cheque in the account of the first defendant and that sum is claimed as counter claim. The plaintiff has stated that the balance outstanding in the current account on 26.4.1988 was only a debit balance and therefore the outstanding was reduced to the extent of credit afforded to the value of Rs.14,110/- and the banker has a lien as per Section 171 of the Indian Contract Act. As already seen, it is a current account and the plaintiff has claimed the balance outstanding in the account as on the date of filing of the suit. The conclusion of the trial Court that the defendants are not entitled to the counter claim is correct and proper. The point is answered accordingly.

14. In the result, the plaintiff is entitled to interest at 12% per annum only on the suit claim from the date of plaint till the date of realisation and the appeal is allowed to the extent mentioned above and the judgment and decree of the trial Court are modified accordingly. However, considering the facts and circumstances of the case, there shall be no order as to costs in the appeal.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

pb

To

1. The Registrar, City Civil Court, Chennai.
 2. 18th Asst. Judge, City Civil Court, Chennai.
 3. The Record Keeper, V.R.Section,
High Court, Madras.
- 1 cc To Mr.N.Ishtiaq Ahmed, Advocate, SR.69555.
2 cc To Mr.Rangarajan, Advocate, SR.69615.

A.S.No.816/1995

NG (CO)
RVL 17.12.2007

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